Supreme Court, U.S.
FILED
APR 14 1995
OFFICE OF THE CLERK

No. 94-1539

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1994

LOUIE MORRIS,

Petitioner,

V.

CITY OF HOBART,
A Municipal Corportion,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Eric S. Eissenstat
Counsel of Record
Fellers, Snider, Blankenship,
Bailey & Tippens
120 North Robinson, Suite 2400
Oklahoma City, OK 73102-7875
(405) 232-0621

April 14, 1995

Counsel for Respondent

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTION PRESENTED

Whether the Court should exercise its extraordinary supervision to review a federal appellate court holding that there is no federal question jurisdiction in a case involving a private contract between non-diverse parties which is governed by state law.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

FEDERAL STATUTES INVOLVED 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. THERE IS NO CONFLICT BETWEEN THE CIRCUITS 3

II. THE TENTH CIRCUIT'S DECISION IS CONSISTENT WITH DECISIONS OF THIS COURT 5

CONCLUSION 8

TABLE OF AUTHORITIES

Page

Cases:

Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) 7

Eatmon v. Bristol Steel & Iron Works, Inc., 769 F.2d 1503 (11th Cir. 1985) 3, 4

England v. Kemp, 976 F.2d 662 (11th Cir. 1992) 3, 4

Fairfax Countywide Citizens Ass'n v. Fairfax County, Va., 571 F.2d 1299 (4th Cir.), *cert. denied*, 439 U.S. 1047 (1978) 4

Kokkonen v. Guardian Life Ins. Co. of America, 114 S.Ct. 1673 (1994) 6, 7

Langley v. Jackson State Univ., 14 F.3d 1070 (5th Cir.), *cert. denied*, 115 S.Ct. 61 (1994) 4, 5

Lucille v. City of Chicago, 31 F.3d 546 (7th Cir. 1994), *cert. denied*, 115 S.Ct. 1109 (1995) 4

McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985) 4

McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178 (1936) 5

Morris v. City of Hobart, 39 F.3d 1105 (10th Cir. 1994) 7

National Farmers Union Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845 (1985) 8

Phillips Petroleum Co. v. Texaco, Inc., 415 U.S. 125 (1974) (*per curiam*) 6

Sawka v. Healtheast, Inc., 989 F.2d 138 (3rd Cir. 1993) 4

Turner v. Bank of North America, 4 U.S. 8 (1799) 5

Statutes:

28 U.S.C. § 1331 . . . . . 2, 6

28 U.S.C. § 1332 6

42 U.S.C. § 1981 1

42 U.S.C. § 2000e *et seq.* 1, 3

No. 94-1539

In The

Supreme Court of the United States

October Term 1994

LOUIE MORRIS,

Petitioner,

v.

CITY OF HOBART,
A Municipal Corporation,

Respondent.

On Petition for Writ of Certiorari to The United States Court of Appeals for The Tenth Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FEDERAL STATUTES INVOLVED

Respondent disagrees with Petitioner that 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1981 are the controlling feder-

al statutes involved in this case. The controlling federal statute is 28 U.S.C. § 1331 which provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

SUMMARY OF ARGUMENT [1]

The United States Court of Appeals for the Tenth Circuit properly found that the district court lacked subject matter jurisdiction. This case involved a dispute between two parties of the same state concerning the interpretation of a private contract. Petitioner sought enforcement of the contract freely and voluntarily negotiated between himself and the City of Hobart. Thus, the claim did not arise "under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, did not depend on the interpretation of federal law, nor was its outcome dependent on the interpretation of the United States Constitution. As such, Petitioner fails to identify any special or important reason for this Court to accept certiorari.

---

[1] Because this case focuses solely on whether there was subject matter jurisdiction in the district court, Respondent will ignore the mischaracterization of the case as recited in Petitioner's Statement of the Case. Respondent does note, however, that the Order denying the petition for rehearing and suggestion for rehearing in banc was entered on December 16, 1994, and not December 16, 1995; and that the Opinion and Order of the district court was filed on October 19, 1992, and not October 19, 1993, as recited in Petitioner's Appendix, nor October 12, 1992, as asserted by Petitioner.

ARGUMENT

I.

THERE IS NO CONFLICT BETWEEN THE CIRCUITS

The decision by the United States Court of Appeals for the Tenth Circuit does not conflict with any other circuit's decision, including those identified in the Petition, *i.e.*, England v. Kemp, 976 F.2d 662 (11th Cir. 1992) or Eatmon v. Bristol Steel & Iron Works, Inc., 769 F.2d 1503 (11th Cir. 1985). The decisions in Eatmon and England are factually and legally distinguishable from the present case.

The Eleventh Circuit held in Eatmon, that an action to enforce a pre-litigation conciliation agreement entered into by the EEOC, the employer and the aggrieved employee was an action "brought under" Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq*. The panel in England adopted the Eatmon case in holding that the district court had subject matter jurisdiction to entertain an employee's claim of sex discrimination in violation of a consent decree where (1) the employee was a member of the class who had settled the claim and was thus a party to the consent order, (2) the district court had expressly reserved authorization to enforce the consent order, and (3) the district court had dismissed the suit after entry of the decree which included a dismissal with prejudice of all class members' claims that existed prior to the decree's approval.

The England and Eatmon cases are not on point. Neither England nor Eatmon address nor discuss the issue of

whether a federal court has jurisdiction to enforce a settlement agreement after the plaintiff has dismissed with prejudice the underlying lawsuit. Every case cited by the England and Eatmon courts in support of their respective decisions is either a case in which there was a conciliation agreement, *i.e.*, a "Title VII agreement" rather than a settlement and dismissal of the lawsuit; or, the motion to enforce the settlement agreement was filed before dismissal of the case while the action was pending.

Unlike an action to enforce a conciliation agreement, an action to enforce a settlement agreement arising out of federal litigation which has been dismissed is governed by state law. A dispute between residents of the same state over the meaning of their contract is traditionally, uncontroversially and exclusively within the jurisdiction of state courts. McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985); Fairfax Countywide Citizens Ass'n v. Fairfax County, Va., 571 F.2d 1299, 1303 (4th Cir.), *cert. denied*, 439 U.S. 1047 (1978). Although some breach of contract actions are within federal jurisdiction, every circuit court has ruled that a contract dispute between citizens of the same state that arises under state rather than federal law is not within federal jurisdiction, even though the contract was made in settlement of a federal question suit. See Fairfax, *supra*; McCall, *supra*; Sawka v. Healtheast, Inc., 989 F.2d 138, 141 (3rd Cir. 1993); Lucille v. City of Chicago, 31 F.3d 546, 548 (7th Cir. 1994), *cert. denied*, 115 S.Ct. 1109 (1995) (dismissing the contention that "just because the initial suit sought to vindicate a federal right, the court possesses federal-question jurisdiction under 28 U.S.C. § 1331 to construe and enforce a contract ending the litigation."); Langley v. Jackson State Univ., 14 F.3d 1070, 1073 (5th Cir.), *cert. denied*, 115 S.Ct. 61 (1994)

("[W]e cannot find ... any indication that Congress has established an administrative structure evidencing its intent to provide a federal forum for private parties to enforce settlement agreements ending discrimination disputes after a lawsuit has been filed.").

There is no conflict between the circuits. The Third, Fourth, Fifth and Seventh Circuits have each resolved the issue in this case consistently with the Tenth Circuit decision. No circuit court has ruled to the contrary. This Court has previously denied certiorari in a case presenting the identical issues, see, *e.g.*, Langley, and there is no special or important reason to grant certiorari in this case.

II.

THE TENTH CIRCUIT'S DECISION IS CONSISTENT WITH DECISIONS OF THIS COURT

Petitioner's assertion that the Tenth Circuit's holding that state law provides the rule of decision conflicts with decisions of this Court is also without merit. "A circuit court, ... is of limited jurisdiction ... [a]nd the fair presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction, until the contrary appears.'" Turner v. Bank of North America, 4 U.S. 8, 10 (1799). The burden of established jurisdiction is on the party claiming it. McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178, 182-83 (1936).

In the instant action, Petitioner sought enforcement of a contract freely and voluntarily negotiated between himself

and the City of Hobart. The claim did not arise, therefore, "under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A case "arises under" the Constitution or the laws of the United States when its decision depends upon the interpretation of the Constitution or federal law. It is only when the action may be defeated by one construction of the law and sustained by another construction or federal law that such jurisdiction exists. The right asserted on which federal question depends must be an essential element of the Petitioner's claim. See, *e.g.*, Phillips Petroleum Co. v. Texaco, Inc., 415 U.S. 125, 127 (1974) (*per curiam*).

The settlement agreement between Petitioner and the City of Hobart, while serving to terminate litigation of a federal claim, was a private contract entered into after private negotiations between private parties. Both its validity and the interpretation of its terms are governed by Oklahoma law. The decision regarding Petitioner's claim did not depend upon the interpretation of federal law nor was its outcome dependent on the interpretation of the Constitution. The parties were citizens of the same state and the matter in controversy did not exceed $50,000. 28 U.S.C. § 1332. There was no special statutory grant of jurisdiction empowering the district court to take cognizance over a simple contract dispute. Once the unqualified dismissal with prejudice was filed, the action at its merits was at an end.

Indeed, the Petition can be disposed of by reference to this Court's recent decision of Kokkonen v. Guardian Life Ins. Co. of America, 114 S.Ct. 1673 (1994). In Kokkonen, the Court held that once the parties to a lawsuit have settled and the district court has dismissed the case, the district court does not have ancillary jurisdiction to enforce the parties'

settlement agreement. *Id.* at 1677. A district court can, however, retain jurisdiction over a settlement agreement if the order of dismissal shows an intent to retain jurisdiction or incorporates the settlement agreement. *Id.*

Here, the district court did not employ either of the two alternatives recognized by Kokkonen to retain jurisdiction over the settlement agreement. Moreover, the Petitioner did not claim that his cause of action was created by federal law. As in Kokkonen, "[t]he suit involves a claim for breach of a contract, part of the consideration for which was dismissal of an earlier federal suit. No federal statute makes that connection (if it constitutionally could) the basis for federal-court jurisdiction over the contract dispute." Kokkonen, 114 S.Ct. at 1677.

Thus, Petitioner's assertion that this Court's decision in Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) requires federal common law to be applied in the settlement of a private state law contract dispute which has as part of its consideration the dismissal of a Title VII claim is totally without merit and has been rejected by every circuit court which has faced the issue. As the Tenth Circuit observed, "[t]he Alexander court merely stated that '[i]n determining the effectiveness of [a waiver of a plaintiff's right to sue under Title VII], a court would have to determine at the outset that the employee's consent to the settlement was voluntary and knowing.' (Citation omitted.) Quite simply, nothing in Alexander could be construed as holding that federal common law governs plaintiff's claim." Morris v. City of Hobart, 39 F.3d 1105, 1112 (10th Cir. 1994).

Thus, although Petitioner correctly states that federal question jurisdiction can be founded on federal common law as well as statutory law, see, *e.g.*, National Farmers Union Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845, 850 (1985),[2] Petitioner's claim was for breach of contract, an action created by state law, not federal common law.

CONCLUSION

This case presents no issue appropriate for this Court's review. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Eric S. Eissenstat
Counsel of Record
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
120 North Robinson, Suite 2400
Oklahoma City, OK 73102-7875
(405) 232-0621

Attorneys for Respondent

---

[2] Erroneously cited in Petitioner's Petition as 481 U.S. 845, 850 (1985).